

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 20, Honorable Socrates Peter Manoukian, Presiding

Judge Mary E. Arand filling in on 10/19/21

Courtroom Clerk: Hienrang Tranthien

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Department20@scscourt.org

**"The Opposing Counsel on the Second-Biggest Case of Your Life
Will Be the Trial Judge on the Biggest Case of Your Life." – Common Wisdom.**

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and drink as friends." (Shakespeare, The Taming of the Shrew, act I, scene ii.)" (Gregori v. Bank of America (1989) 207 Cal.App.3d 291, 309.)

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PLEASE NOTE THAT DEPARTMENT 20 USES A TENTATIVE RULING PROCEDURE AS FOLLOWS:

Law & Motion matters are heard every Tuesday and Thursday at 9:00 a.m. Tentative rulings will be accessible on after 2:00 p.m. on the court date preceding the scheduled hearing at:

https://www.scscourt.org/online_services/tentatives/tentative_rulings_Dept20.shtml

Tentative rulings will become Orders of the Court unless contested. See California Rules of Court, rules 3.1308(a)(l) and 3.1312.

To arrange an appearance to contest a tentative ruling, notify the Court at Prince 408) 808.6856 before 4:00 PM on the court dates before the hearing. You may make your notification to the Court by leaving a message when prompted to do so at the end of the recorded greeting. When you leave your message, state only the case number, case name, the name of the attorney, telephone number, and a brief statement as to the portion of the tentative ruling to which objection is taken. Messages should be brief and notify the portion of the ruling to which objection is taken. Please try to keep the message under 30 seconds.

You must also notify opposing counsel. You do not need to call or leave a message if you are not contesting the tentative ruling.

DATE: Tuesday, 19 October 2021

TIME: 9:00 A.M.

**This Department prefers that litigants use Zoom for Law and Motion and for Case Management Calendars.
CourtCall is also acceptable.**

Join Zoom Meeting

<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dUdsc3NKNFpSjlEam5xUT09>

Meeting ID: 961 4442 7712

Password: 017350

Join by phone:

+1 (669) 900-6833

Meeting ID: 961 4442 7712

One tap mobile

+16699006833,,961 4442 7712#

All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." If your client is with you, please inform the Court how your client would prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers.

**VIRTUAL ACCESS INTO THE COURTHOUSE WITH THE "ZOOM" VIRTUAL PLATFORM.
PLEASE READ THIS PAGE IN ITS ENTIRETY AS SOME OF THE PROTOCOLS HAVE CHANGED.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.)

SOCIAL DISTANCING PROTOCOLS

In light of COVID-19-related health concerns and due to the Order of the Public Health Department, Department 20 has resumed Law & Motion calendars but with safe-distancing protocols. Please check this tentative rulings page before making any appearance. Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

Appearances.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d).

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 7(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the court by 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Entry into the Courthouse.

As for matters which require personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. It will help if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**

If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

The Santa Clara County Superior Court has established listen-only telephone Lines to allow remote access to public court proceedings. To listen to a public court proceeding in Department 20, you may dial 888-251-2909. When prompted, enter the access code number 4362730 when prompted, followed by the pound or hashtag (#) sign.

Court Reporters.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom.

Counsel should meet and confer on the use of a court reporter. Occasionally each side will retain a court reporter which leaves this Court in a conundrum as to which reporter will be the official reporter for the purposes of the hearing.

Protocols during the Hearings.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds will be of great assistance to minimize feedback.

If you appear in person, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. **California Rules of Court**, rule 3.1304(c).

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

Troubleshooting Tentative Rulings.

If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

Tentative Rulings Are Continued Below. Full Orders Are On The Following Pages.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV364549	Faramarz Kiani vs Tom McNeil	Ctrl and click on Line 1 for ruling.
LINE 2	21CV376210	GEORGE KU et al vs HARALD HERCHEN	Appearance of counsel is required.
LINE 3	19CV351230	Jayson Elliott et al vs Nicholas Wiswell et al	The motion to clarify and correct a prior order must be heard by Judge Manoukian. Related motion for attorney fees is also to be continued to allow Judge Manoukian to hear these motions. Available dates: December 9 or 14. Counsel to meet and confer and appear to advise court of the agreed on date.
LINE 4	19CV351230	Jayson Elliott et al vs Nicholas Wiswell et al	See line 4
LINE 5	20CV361413	BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP vs MAJID MARHAMAT et al	The motion by Deepa Talwar, Esq. and the Legacy Law Group to be relieved as counsel for Defendant Majid Marhamat was timely and properly served, is unopposed, and is GRANTED. The order will be effective upon the filing of proof of service of the signed order on the client and all parties. However, the Court notes that the only proof of service of the motion is attached to the proposed order, which is confusing as it shows a proof of service before the order is signed, and it will be removed from the court file. Moving counsel shall file a separate proof of service of the motion reflecting the original service of the motion.
LINE 6	20CV368062	Cheryl Buck vs BLU HOMES, INC.	Continued to December 9 or 14 to allow this matter to be heard by Judge Manoukian. Counsel to meet and confer and appear to advise the Court which date works best.
LINE 7	21CV385612	Indradevi Joseph vs Xilinx, Inc. et al.	This motion is continued to November 4, 2021. If any party objects to this date, other counsel are to be notified and all counsel are required to appear to discuss a date that will be in December.
LINE 8			
LINE 9			

LINE #	CASE #	CASE TITLE	RULING
LINE 10			
LINE 11			
LINE 12			
LINE 13			
LINE 14			

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Calendar Line 1

Case Name: *Faramarz Kiani vs Tom McNeil*

Case No.: 20CV364549

Plaintiff's counsel denies that she received the service of the original Requests for Admission or the motion to deem requests admitted. Plaintiff's failure to oppose the motion is understandable as the motion was not properly served. Defendant did not comply with Civil Local Rule 8(c) which requires a moving party to file an amended notice of motion with proof of service after the Clerk has filed the moving papers and issued a hearing date. The papers were processed and a hearing date was assigned on May 13, 2021. The only proof of service filed shows service on April 9, 2021, before any hearing date was set. Although Plaintiff's counsel learned of the hearing shortly before, Plaintiff did not have the opportunity to file appropriate opposition, and the motion should not have been granted for lack of adequate notice and due process. On that basis alone, the Court finds that the motion should be granted and allow Plaintiff the opportunity to serve responses.

The Court does not understand why counsel did not receive the original Requests for Admissions or the copy of the motion (that did not have a date for the hearing on it). Although counsel objects because she allegedly did not consent to email service, Local Rules that have been in effect since 2019 provide that: "As authorized by Code of Civil Procedure section 1010.6(d) and Rules of Court, Rule 2.253(b)(1)(A), all parties represented by attorneys in all civil cases (including Family, Juvenile Dependency, and Probate cases) must file and serve documents electronically...." (General Local Rule, 6(b)(1), entitled "Mandatory Electronic Filing and Service"). In other words, no consent to electronic service is required, and acceptance of electronic service is mandatory.

However, the Court is not inclined to disbelieve counsel's representation that she did not receive the discovery requests, but the Court suggests that counsel check her spam folder.

The Court also notes that attorney Melody Sequoia filed pleadings in this case before filing an appropriate association of counsel, and was not counsel of record at the time she served requests for admission and the motion to deem requests for admissions. On the date of the hearing, she corrected that deficiency by filing a notice of association. The Court will also overlook this error by defense counsel.

Defendant is mistaken that a motion to deem requests admitted must be granted and that the Court has no discretion. Any doubts in applying CCP § 2033.300 must be resolved in favor of the party seeking relief; accordingly, the court's discretion to deny a motion under the statute is limited to circumstances where it is clear that the mistake, inadvertence, or neglect was inexcusable, or where it is clear that withdrawal or amendment would substantially prejudice the party who obtained the admission in maintaining that party's action or defense on the merits. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal. App. 4th 1403.) The Court finds no evidence that the Defendants' defense would be prejudiced by grant of this motion.

Accordingly, the motion to amend or withdraw admissions is GRANTED. Within 20 days of issuance of this order, Plaintiff shall serve full and complete, verified code-complaint responses, without objections, to the Defendants' First Set of Requests for Admission. No sanctions are awarded to any party. However, the Defendant may do additional discovery based on the new responses.

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